

Message

From: Schaub, Mike [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C7102F9F8CC43DDA1D2CA2B1B238FE4-SCHAUB, MIKE]
Sent: 2/24/2020 5:23:16 PM
To: Jamie Phillippe [Jamie.Phillippe@LA.GOV]
Subject: RE: 2016 TR comments

Hi Jamie,

As part of this regulatory revision, LDEQ added language to LAC 33 Part IX, 1109.A.2 stating ""Where the water quality exceeds levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water, that water quality shall be maintained and protected unless the state finds, **after full satisfaction of the intergovernmental coordination and public participation provisions of the state's Continuing Planning Process**, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the state shall assure water quality adequate to protect existing uses fully. Further, the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control."

In your RTC, you could refer to the bolded language above, which is consistent with the federal antidegradation regulation and makes it clear that public participation is required anytime a lowering of high quality waters is under consideration, regardless of whether the state uses a parameter-by-parameter or waterbody-by-waterbody approach to identify high quality waters. The difference between the two approaches (p-by-p or w-by-w) is the point in the process at which the opportunity for public participation is provided.

For the parameter-by-parameter approach, public participation is required any time the approval of an activity that may lower water quality in a high quality water may occur. Typically this occurs during the public notice stage of a permit or 401 certification. For the waterbody-by-waterbody approach, since the state could decide that a waterbody is Tier 1 before ever considering an activity that could lower water quality, a state could essentially allow the lowering of water quality in those water bodies without ever getting public input. In this case, the federal regulations LDEQ has mirrored require that the state obtain public input on the decision to assign a water body Tier 1 or Tier 2 protection, so that the public has a say in whether assimilative capacity can be utilized in those waters that the state may assign Tier 1 protection to.

I hope this helps. The above was largely provided by my HQs counterparts and really puts together the requirements in a manner I had not considered, and, therefore, had wondered about with respect to the notice requirements of the p-by-p approach. Let me know if you have any further questions.

Mike Schaub
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214-665-7314

From: Jamie Phillippe <Jamie.Phillippe@LA.GOV>
Sent: Thursday, February 20, 2020 4:23 PM
To: Schaub, Mike <Schaub.Mike@epa.gov>
Subject: FW: 2016 TR comments

Mike,

I'm working on responses to all of the public comments submitted for WQ097 and have one that EPA may be able to clarify for me.

It's at the bottom of page one/top of page two in the attachment and regards public participation with the two antidegradation approaches; DEQ closely followed the verbiage at 40 CFR 131.12(a)(2)(i). GRN's comment requests public participation for the parameter-by-parameter approach. In regulation, this is clear for the waterbody-by-waterbody approach, but unclear for the parameter-by-parameter approach.

Please let me know whether the parameter-by-parameter approach is subject to public participation like the waterbody-by-waterbody approach.

Thanks,
Jamie

From: Jamie Phillippe
Sent: Friday, February 7, 2020 9:17 AM
To: 'Schaub, Mike' <Schaub.Mike@epa.gov>
Subject: 2016 TR comments

Mike,

Here are the 2016 TR comments received, other the one EPA sent.

Ammonia criteria had no comments. Most comments concern the water quality clarification rule and eLMRAP DO.

I'll send you my ammonia analysis separately after I've completed my review of it; likely some time next week.

Thanks,
Jamie